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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	
67108-013; Jiang 19-6	

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I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300.

on June 9, 2008

Signature [signature]

Typed or printed name Theresa M. Palmateer

Application Number	Filed
10/644,346	08/20/2003

First Named Inventor: Frances Jiang

Art Unit	Examiner
2617	Kasraian, Allahyar

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record. Registration number 37,139

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

[signature]
Signature

David J. Gaskey
Typed or printed name

(248) 988-8360
Telephone number

June 9, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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67,108-013
Jiang 19-6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Frances Jiang
Serial Number:	10/644,346
Filed:	08/20/2003
Group Art Unit:	2617
Examiner:	Kasraian, Allahyar
Title:	METHOD OF MANAGING WIRELESS NETWORK RESOURCES TO GATEWAY DEVICES

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant appeals the final rejection of February 7, 2008 and asks for pre-appeal brief review because there is no prima facie case against any of Applicant's claims.

The Rejection of Claims 13-21 Under 35 USC §112 Must Be Withdrawn.

Claim 13 is clear on its face. The use of "an access terminal" in line 5 and the use of "a gateway access terminal" in line 7 are appropriate given that there are conditional determinations in the "determining" steps (e.g., the use of the term "whether" in those steps). It is clear from claim 13 that if a terminal is determined to be a gateway access terminal and if such a terminal has a data backlog and satisfies a selected criteria, then a priority of such a terminal is adjusted. One of ordinary skill in the art has no problem understanding exactly what claim 13 means. This is demonstrated by the correct interpretation given to it by the Examiner in the office action. There is no inconsistency between the wording of the claim and the interpretation given by the Examiner. The rejection should be withdrawn.

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The Rejection of Claims 1, 8, 10-14 and 19-20 Under 35 USC §102 Must Be Withdrawn.

There is no prima facie case of anticipation. The *Iuoras* reference does not include using a data backlog of a gateway access terminal as suggested by the Examiner. Applicant disagrees with the Examiner's conclusion that line 17 of column 8 of the *Iuoras* reference teaches "obtaining a data backlog size of said at least one gateway access terminal." The *Iuoras* reference only uses the input and output ports of the onboard controller 30 ***of the satellite node*** 10 for congestion control and related functions described in the *Iuoras* reference. This becomes clear by considering the following excerpts of the *Iuoras* reference, for example:

> According to one aspect of the present invention, a method is proposed to efficiently support ABR services ... providing minimum capacity guarantee and flow control for ABR sources, in order to prevent excessive cell loss or delay for ABR traffic, ***resulting from congestion of on-board satellite resources***. (Col. 8. lines 5-11) (Emphasis added.)
>
> The on-board processor 30 includes the ... on-board switch 31 is made of the input ports 35, the output ports 36 (where the queuing is performed, in the buffers 37) ... input port and output port will alternatively be used for uplink channel and downlink channel, respectively. (Col.14, lines 46-51 and col. 15, lines 3-5)
>
> Congestion control only needs to be enforced in the downlink channels, in order to maintain a reasonable cell loss ratio in the conditions of a rather limited switch buffer size, due to cost, mass and power constraints associated with the ***on-board*** implementation. (Col. 15, lines 17-21) (Emphasis added.)
>
> The port algorithm is mainly composed of various congestion control-related measurements performed by ***the input and/or output ports***. (Col. 17, lines 5-7) (Emphasis added.)
>
> The OBNC calculates the fair rates and the required amount of rate adaptation ***in each input port*** (rate decrease or no change) ***and each output port*** (rate increase, decrease or no change). (Col. 19, lines 23-26) (Emphasis added.)
>
> As in the case of the input ports, the OBNC algorithm for the output ports determines whether the allowable cell rates of user terminals need to be adapted in response to the current load and ***downlink queue size of the output ports***. (Col. 26, lines 16-19) (Emphasis added.)

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From the above quoted text, it is clear that the *Iuoras* reference utilizes the ports on board the satellite node 10 for congestion control and does not use any data backlog size of either of the user terminal 11 or the gateway terminals 12. There is nothing in the reference that in any way uses a data backlog size of a gateway access terminal and, therefore, no prima facie case of anticipation.

The Examiner's comments in the final action reveal two basic errors. One is that the Examiner considers the satellite node 10 "downlink buffer occupancy" in the *Iuoras* reference as a data backlog of one of the terminals 11 or 12. That is directly contrary to the express teachings of the *Iuoras* reference, which indicate that the "downlink buffer" used for the congestion control is that of the output ports on board the satellite node 10. The buffer occupancy of the satellite node 10 is for traffic to be sent to the terminals 11 or 12. A data backlog size of the terminals, on the other hand, indicates what is waiting to be sent from the terminal (not to be received by it). The satellite node downlink buffer and the associated output ports, therefore, do not provide any indication of what the backlog size is at the terminals. Therefore, there is no way to find a determination of a backlog size at a gateway terminal in the reference and there is no *prima facie* case of anticipation. The rejection must be withdrawn.

The other error appears to be the Examiner's interpretation of the claims, themselves. The Examiner noted that claim 1 "does not indicate where the backlog for the gateway access terminal is located." That is incorrect. Claim 1 recites, "obtaining a data backlog size of said at least one gateway access terminal." The backlog size of the terminal belongs to the terminal (i.e., is at the terminal), itself, and is not one at another device like the satellite node 10. The *Iouras* reference buffer occupancy is that of the satellite node 10, not that of either of the

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terminals 11 or 12. The Examiner appears to be ignoring the plain and ordinary meaning of the claim language.

Similarly, claim 13 recites, "determining whether an access terminal determined to be a gateway access terminal has a data backlog at the gateway access terminal." The claimed determinations regarding a data backlog "of the gateway access terminal" or "at the gateway access terminal" mean the same thing and both are distinct from what is disclosed in the *Iouras* reference. The rejection must be withdrawn.

The Rejections Under
35 USC §103 Must Be Withdrawn.

Every one of the rejections under 35 U.S.C. §103 must also be withdrawn because they all depend on the same incorrect conclusions regarding what is contained in the *Iuoras* reference. Therefore, even if the proposed combinations were possible, the result of such combinations would not be what the Examiner contends. Without that, there is no *prima facie* case of obviousness against any of Applicant's claims.

Additionally, the *Iuoras* reference cannot be modified to be consistent with Applicant's claims. If one were to substitute a gateway terminal backlog size consideration for the downlink buffer occupancy of the satellite node 10 of *Iuoras*, that would change *Iuoras'* principle of operation and interfere with its ability to perform its intended function. It would no longer be possible to control congestion at the satellite node 10, for example, if one were to consider a data backlog of (or at) another device such as a gateway access terminal. Such a modification is not possible according to MPEP 2143.01(V) and (VI), for example.

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None of Applicant's claims can be rejected over the *Iuoras* reference. All rejections should be withdrawn now.

CARLSON, GASKEY & OLDS, P.C.

By: _____

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Dated: June 9, 2008

CERTIFICATE OF FACSIMILE

I hereby certify that this Request for Pre-Appeal Brief Review, relative to Application Serial No. 10/701,276, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on June 9, 2008.

Theresa M. Palmateer

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